**CONTRACTS ADMINISTRATION**

**6300 Ocean Drive, Unit 5731**

**Corpus Christi, Texas 78412-5731**

# PROFESSIONAL SERVICES AGREEMENT

# between TEXAS A&M UNIVERSITY – CORPUS CHRISTI

**and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

This Professional Services Agreement (“Agreement”) between **Texas A&M University- Corpus Christi**, a member of The Texas A&M University System, an agency of the State of Texas (“TAMU-CC”), and, (“Provider”), is made and entered into as of , 201 (”Effective Date”).

This Agreement is for the provision of professional services outlined in the Scope of Work. Provider represents to having the knowledge, ability, skills and resources to provide such services in accordance with the terms and requirements of this Agreement. To any extent required under the Scope of Work, Provider represents that any part of the performance required to be performed by a professional having state licensure in good standing will be performed by such licensed professional.

TAMU-CC and Provider hereby agree as follows:

# SCOPE OF WORK

1. Provider shall provide [INSERT SERVICES], which include, but are not limited to:
2. The scope of the work (“Work”) and the time for performance thereof, is as set forth in Appendix A attached hereto and made a part hereof for all purposes including the HUB subcontracting plan and any reports required thereunder.
3. Upon execution of this Agreement, all services previously performed by Provider on behalf of TAMU-CC and included in the description of the Work, shall become part of the Work and shall be subject to the terms and conditions hereof.
4. Provider shall take reasonable precautions to verify the accuracy and suitability of any drawings, plans, sketches, instructions, information, requirements, procedures, requests for action, and other data supplied to Provider for use in the Service under this Agreement. Provider shall identify to the TAMU-CC in writing any such documents or data which, in Provider’s professional opinion, are unsuitable, improper, or inaccurate in connection with the purposes for which such documents or data are furnished. TAMU-CC does not warrant the accuracy or suitability of such documents or data as are furnished unless Provider advises TAMU-CC in writing that, in Provider’s professional opinion, such documents or data are unsuitable, improper, or inaccurate and TAMU-CC confirms in writing that it wishes Provider to proceed in accordance with the documents or data as originally given.
5. Provider agrees and acknowledges that TAMU-CC is entering into this Agreement in reliance on Provider’s represented professional abilities with respect to performing the services, duties, and obligations under this Agreement. Provider shall perform its services in accordance with the usual and customary professional standards of care, skill, and diligence consistent with its industry and like firms in Texas that provide professional services for projects that are similar in size, scope, and budget to the Project (the “Standard of Care”). Subject to this Standard of Care, Provider shall interpret and apply applicable national, Federal, State, and municipal laws, regulations, codes, ordinances, and orders in effect at the time the services are provided. There are no obligations, commitments, or impediments of any kind known to the Provider that will limit or prevent performance by Provider of its services.
6. Provider shall allocate adequate time, personnel, internal administration, supervision, and resources as necessary to perform its services in an expeditious and economical manner consistent with the interests of TAMU-CC. Provider’s Project Principal(s) responsible for managing the Project is identified in Appendix A and, while employed by Provider, shall not be changed without the prior written approval of TAMU-CC.
7. TAMU-CC’S approval or acceptance of Provider’s services shall not relieve Provider of any of its professional duties nor release Provider from any liability for negligent delivery of such services because TAMU-CC is, at all times, relying upon Provider’s skill and knowledge in performing Provider’s services. TAMU-CC shall have the right to reject any of Provider’s services due to any material errors or omissions in any deliverables prepared by Provider or its consultants. Upon notice of any such errors or omissions, Provider shall promptly provide any and all services necessary to correct or remedy them at no additional cost to TAMU-CC. Provider’s obligation to correct its errors and omissions is in addition to, and not in substitution for, any other remedy for defective services which TAMU-CC may have at law or in equity, or both.

# TIME FOR COMMENCEMENT AND COMPLETION

It is understood that time is of the essence in the Work to be performed under this Agreement and that Provider shall complete all authorized Work in accordance with the time for performance described for the Work, and in a minimum of time consistent with the highest customs, standards, and practices of Provider’s business or profession. Work is to commence [INSERT START DATE] and will be completed no later than [INSERT COMPLETION/FINAL TERMIN DATE]

# PAYMENT TERMS and MAXIMUM CONTRACT SUM

1. For the satisfactory performance of the Work, TAMU-CC shall pay Provider an amount not to exceed [WRITE OUT AMOUNT] ($ ). Provider’s Fee Schedule is attached as Appendix A.
2. TAMU-CC reserves the right to increase the scope of this engagement as necessary but the total billings for authorized work shall not exceed [WRITE OUT AMOUNT] ($\_\_\_\_\_).

C. Payments of the amount due to Provider will be provided by TAMU-CC upon receipt of an invoice which details the date of service, description of work performed, billing rate as set forth in Appendix B, and provides supporting documentation for reimbursable expenses relating to Work requested by TAMU-CC, if any. The invoice must be signed by the Provider and submitted to TAMU-CC at the address specified in Section 8 below. Payment for travel related expenses shall be in accordance with State of Texas Travel Guidelines.

D. TAMU-CC makes no representations regarding the amount or type of services, if any, that TAMU-CC will be asked to provide to TAMU-CC during the term(s) of this Agreement. It is expressly understood that TAMU-CC is under no obligation to request any services from Provider and no minimum amount of work is required or contemplated under this Agreement. All service requests will be made by TAMU-CC on an as-needed basis, subject to future agreement on the scope of the work and the fee.

# DEFAULT AND TERMINATION

1. In the event of substantial failure by a party hereunder to perform in accordance with the terms hereof, the other party may terminate this Agreement upon fifteen (15) days written notice of termination setting forth the nature of the failure (the termination shall not be effective if the failure is fully cured prior to the end of the fifteen-day period), provided that said failure is through no fault of the terminating party.
2. TAMU-CC may, without cause, terminate this Agreement at any time upon giving thirty days advance notice to Provider. Upon termination pursuant to this paragraph, Provider shall be entitled to payment of such amount as shall compensate Provider for the services satisfactorily performed from the time of the last payment date to the termination date in accordance with this Agreement, provided Provider shall have delivered to TAMU-CC a final report describing the work completed to the date of termination. TAMU-CC shall not be required to reimburse Provider for any services performed or expenses incurred after the date of termination notice.

# TAMU-CC FACILITIES [optional section]

TAMU-CC will provide Provider with office space, as needed, to carry out Provider’s duties under this Agreement. Any non-consumable items provided by TAMU-CC will remain TAMU- CC property at the termination of this Agreement unless otherwise agreed in writing. Provider and its employees will be permitted access to and use of the allocated office space, but TAMU-CC reserves the right to enter the premises to conduct TAMU-CC business, as may be reasonably necessary or for health and safety purposes.

# INSURANCE

Provider shall obtain and maintain, for the duration of this Agreement or longer, the minimum insurance coverage set forth below. With the exception of Professional Liability (E&O), all coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and have a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to TAMU-CC. By requiring such minimum insurance, the Owner shall not be deemed or construed to have assessed the risk that may be applicable to Provider under this Agreement. Provider shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Provider is not relieved of any liability or other obligations assumed pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. No policy will be canceled without unconditional written notice to TAMU-CC at least ten days before the effective date of the cancellation.

**Coverage Limit**

* 1. **Worker’s Co mpensation**

Statutory Benefits (Coverage A) Statutory

Employers Liability (Coverage B) $1,000,000 Each Accident

$1,000,000 Disease/Employee

$1,000,000 Disease/Policy Limit

Workers’ Compensation policy must include under on the information page of the workers’ compensation policy the state in which work is to be performed for Texas A&M University – Corpus Christi. Workers’ compensation insurance is required, and no “alternative” forms of insurance will be permitted.

# B. Automobile Liability

Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than $1,000,000 Single Limit of liability per accident for Bodily Injury and Property Damage.

# C. Commercial General Liability

Each Occurrence Limit $1,000,000

|  |  |
| --- | --- |
| General Aggregate Limit | $2,000,000 |
| Products / Completed Operations | $1,000,000 |
| Personal / Advertising Injury | $1,000,000 |
| Damage to rented Premises | $300,000 |
| Medical Payments | $5,000 |

The required commercial general liability policy will be issued on a form that insures Provider’s or its subcontractors’ liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

**D. Professional Liability (Errors & Omissions)** Insurance with limits of not less than $1,000,000 each occurrence, $2,000,000 aggregate. Such insurance will cover all professional services rendered by or on behalf of Provider and its subcontractors under this Agreement. Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of this Agreement. If coverage is written on a claims-made basis, Provider agrees to purchase an Extended Reporting Period Endorsement, effective for two (2) full years after the expiration or cancellation of the policy. No professional liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least two (2) years after the expiration of cancellation of this Agreement.

The required commercial general liability policy will be issued on a form that insures Provider’s or its subcontractors’ liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

**E. Provider will deliver to TAMU-CC:**

Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance after the execution and delivery of this Agreement and prior to the performance of any services by Provider under this Agreement. Additional evidence of insurance will be provided on a Texas Department of Insurance approved certificate form verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

***All insurance policies***, with the exception of worker’s compensation, employer’s liability and professional liability will be endorsed and name The Board of Regents for and on behalf of The Texas A&M University System, The Texas A&M University System and TAMU-CC as Additional Insureds up to the actual liability limits of the policies maintained by Provider. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage. The Commercial General Liability Additional Insured endorsement will include on-going and completed operations and will be submitted with the Certificates of Insurance.

***All insurance policies*** will be endorsed to provide a waiver of subrogation in favor of The Board of Regents of The Texas A&M University System, The Texas A&M University System and TAMU-CC. No policy will be canceled without unconditional written notice to TAMU-CC at least ten days before the effective date of the cancellation. ***All insurance policies*** will be endorsed to require the insurance carrier providing coverage to send notice to TAMU-CC ten (10) days prior to the effective date of cancellation, material change, or non- renewal relating to any insurance policy required in this Section.

Any deductible or self-insured retention must be declared to and approved by TAMU-CC prior to the performance of any services by Provider under this Agreement. Provider is responsible to pay any deductible or self-insured retention for any loss. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be mailed, faxed, or emailed to the following TAMU-CC contact:

attn.: Contracts Administration

6300 Ocean Drive, Unit 5731

Corpus Christi, Texas 78412

contracts@tamucc.edu

The insurance coverage required by this Agreement will be kept in force until all services have been fully performed and accepted by TAMU-CC in writing.

**[NOTE: PURSUANT TO SYSTEM POLICY 24.03, THE A&M SYSTEM RISK MANAGEMENT DEPARTMENT IS RESPONSIBLE FOR ASSESSING INSURABLE RISKS. CONTACT RISK MANAGEMENT FOR A RECOMMENDATION ON THE MOST APPROPRIATE COVERAGE.]**

# OWNERSHIP AND USE OF DOCUMENTS

All documents prepared by the Provider under this Agreement, and the ideas and designs contained therein, shall be property of TAMU-CC. Provider shall be permitted to retain copies, including reproducible copies, of all documents prepared by the Provider for information and reference in connection with the project.

# NOTICES

Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email, or other commercially reasonably means and will be effective when actually received. TAMU-CC and Provider can change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

**Texas A&M University:** Texas A&M University – Corpus Christi

attn; Contracts Administration

6300 Ocean Drive, Unit 5731

Corpus Christi, Texas 78412

Email: contracts@tamucc.edu

# Provider:

Telephone:

Facsimile: Email:

# PUBLIC INFORMATION

i) Provider acknowledges that TAMU-CC is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law.

(ii) Upon TAMU-CC’s written request, Provider will promptly provide specified contracting information exchanged or created under this Agreement for or on behalf of TAMU-CC.

1. Provider acknowledges that TAMU-CC may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code.
2. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Provider agrees that the Agreement can be terminated if the Provider knowingly or intentionally fails to comply with a requirement of that subchapter.

# DISPUTE RESOLUTION

The dispute resolution process provided in Chapter 2260, *Texas Government Code,* and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by TAMU- CC and Provider to attempt to resolve any claim for breach of contract made by Provider that cannot be resolved in the ordinary course of business. Provider shall submit written notice of a claim of breach of contract under this Chapter to TAMU-CC’s Contracts Director or authorized designee, who shall examine Provider’s claim and any counterclaim and negotiate with Provider in an effort to resolve the claim.

# HUB SUBCONTRACTING

It is the policy of the State of Texas, the Texas Procurement and Support Services and the Texas A&M University System to encourage the use of Historically Underutilized Businesses (HUBs) in our prime contracts, subcontractors and purchasing transactions. The goal of the HUB program is to promote equal access and equal opportunity in A&M System contracting and purchasing. The Provider having been awarded this Contract in part by complying with the Historically Underutilized Business (HUB) Certification Program, Chapter 111, Subchapter B, 1 T.A.C., shall continue to comply with the program and its accepted HUB Subcontracting Plan.

Provider agrees on allocating work to subcontractors (consultants) as listed (or indicated) on their HUB Subcontracting Plan, in accordance with The Texas A&M University System Policy on Historically Underutilized Businesses. No changes to the HUB Subcontracting Plan may be made unless approved in writing by TAMU-CC. While this Agreement is in effect and until the expiration of one year after completion, TAMU-CC may require information from the Provider, and may conduct audits, to assure that the HUB Subcontracting Plan is followed.

# MISCELLANEOUS

1. Provider agrees to indemnify and hold harmless TAMU-CC from any claim, damage, liability, expense, or loss arising out of Provider’s negligent or intentional acts or omissions in performance under this Agreement.
2. Provider shall neither assign its rights nor delegate its duties under this Agreement without the prior written consent of TAMU-CC.
3. Provider shall be an independent contractor, and neither Provider nor any employee of Provider shall be deemed to be an agent or employee of TAMU-CC. As an independent contractor, Provider will be solely responsible for determining the means and methods for performing the services described. Provider shall observe and abide by all applicable laws and regulations, policies and procedures, including but not limited to, those of TAMU-CC relative to conduct on its premises.
4. Ethics Matters. Neither Provider nor its employees, agents, representatives or consultants will assist or cause any TAMU-CC employee to violate TAMU-CC’S Conflicts of Interest Policy or applicable state ethics laws or rules. Provider represents and warrants that no member of the Board of Regents of the Texas A&M University System nor employee of TAMU-CC has a direct or indirect financial interest in the transaction that is the subject of this Agreement.
5. This Agreement constitutes the sole agreement of the parties and supersedes any other oral or written understanding or agreement. This Agreement may not be amended or otherwise altered except upon the written agreement of both parties.
6. The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas. Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against TAMU-CC shall be in the county in which the primary office of the chief executive officer of TAMU-CC is located.
7. If Provider is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then Provider certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that Provider is exempt from the payment of franchise (margin) taxes.
8. TAMU-CC may request a consultant to perform a criminal background check on any employee and/or representative of Provider who conducts business pursuant to this Agreement on the campus of TAMU-CC.
9. Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.
10. Pursuant to Section 2252.903, *Texas Government Code*, Provider agrees that any payments owing to Provider under this Agreement may be applied directly toward certain debts or delinquencies that Provider owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.
11. Provider expressly acknowledges that TAMU-CC is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by TAMU-CC of its right to claim such exemptions, privileges, and immunities as may be provided by law.
12. Provider acknowledges and understands that Section 2252.901, *Texas Government Code*, prohibits TAMU-CC from using state appropriated funds to enter into any employment contract, consulting contract, or professional services contract with any individual who has been previously employed, as an employee, by the agency within the past twelve (12) months. If Provider is an individual, by signing this Agreement, Provider certifies that Section 2252.901, *Texas Government Code*, does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.
13. Performance by TAMU-CC under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the “Legislature”). If the Legislature fails to appropriate or allot the necessary funds, TAMU-CC will issue written notice to Provider and TAMU-CC may terminate this Agreement without further duty or obligation hereunder. Provider acknowledges that appropriation of funds is beyond the control of TAMU-CC.

N. Prohibition on Contracts with Companies Boycotting Israel. To the extent that Texas Government Code, Chapter 2271 applies to this Agreement, Provider certifies that (a) it does not currently boycott Israel; and (b) it will not boycott Israel during the term of this Agreement.  Provider acknowledges this Contract may be terminated and payment withheld if this certification is inaccurate.

O. Certification Regarding Business with Certain Countries and Organizations. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Provider certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Provider acknowledges this Agreement may be terminated if this certification is inaccurate.

P. Records Retention.Provider will preserve all contracting information, as defined under Texas Government Code, Section 552.003 (7), related to the Agreement for the duration of the Agreement and for seven years after the conclusion of the Agreement.

Q. Prohibition on Contracts Related to Persons Involved in Human Trafficking. Under Section 2155.0061, Government Code, the Provider certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified Agreement and acknowledges that this Agreement may be terminated, and payment withheld if this certification is inaccurate.

R. Not Eligible for Rehire. Provider is responsible to ensure that employees participating in work for any A&M System member have not been designated by the A&M System as Not Eligible for Rehire as defined in A&M System Policy 32.02, §4. Non-conformance to this requirement may be grounds for termination of this Agreement.

S. Limitations. The Parties are aware that there are constitutional and statutory limitations on the authority of TAMU-CC (a State agency) to enter into certain terms and conditions of this Agreement, including, but not limited to, those terms and conditions relating to liens on TAMU-CC’s property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys’ fees; dispute resolution; indemnities; and confidentiality (collectively, the “Limitations”), and terms and conditions related to the Limitations will not be binding on TAMU-CC except to the extent authorized by the Constitution and the laws of the State of Texas. Neither the execution of this Agreement by TAMU-CC nor any other conduct, action, or inaction of any representative of TAMU-CC relating to this Agreement constitutes or is intended to constitute a waiver of TAMU-CC’s or the State’s sovereign immunity to suit.

T. Conflict of Interest.By executing this Agreement, Provider and each person signing on behalf of Provider certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of The A&M System or The A&M System Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by The A&M System, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.

**13. PROMPT PAYMENT ACT**

It is the policy of the state of Texas to make payment on a properly prepared and submitted invoice within thirty (30) days of the latter of any final acceptance of performance or the receipt of a properly submitted invoice, in conformance with the Texas Prompt Payment Act. Generally, payment will be made on the 30th day unless a discount has been arranged for more immediate payment.

1. **ENTIRE AGREEMENT**

This document constitutes the entire Agreement between TAMU-CC and Provider. This Agreement supersedes all oral or written previous and contemporary understandings or agreements relating to matters contained herein. This Agreement may not be amended or otherwise altered except by mutual agreement in writing signed by TAMU-CC and Provider.

IN WITNESS WHEREOF, the parties have signed this Agreement on the date indicated below their signatures.

**TEXAS A&M UNIVERSITY [Insert Provider Name]**

**- CORPUS CHRISTI**

By: Name: Title: Dated:

By: Name: Title: Dated:

Address:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Telephone:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_